

STATE OF SOUTH CAROLINA

(Caption of Case)

Certification of the Use of Universal  
Service Funds Pursuant to 47 CFR 54.313  
and 54.314 and the Telecommunications  
Act of 1934

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 299 - C

(Please type or print)

Submitted by: John M.S. Hoefer

Address: Post Office Box 8416  
Columbia, SC 29202

SC Bar Number: 2549

Telephone: 803-252-3300

Fax: 803-771-2410

Other:

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)

- ☐ Electric  
☐ Electric/Gas  
☐ Electric/Telecommunications  
☐ Electric/Water  
☐ Electric/Water/Telecom.  
☐ Electric/Water/Sewer  
☐ Gas  
☐ Railroad  
☐ Sewer  
☒ Telecommunications  
☐ Transportation  
☐ Water  
☐ Water/Sewer  
☐ Administrative Matter  
☐ Other:

NATURE OF ACTION (Check all that apply)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Affidavit                 | <input checked="" type="checkbox"/> Letter                 | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Agreement                 | <input type="checkbox"/> Memorandum                        | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer                    | <input type="checkbox"/> Motion                            | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Brief                     | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input type="checkbox"/> Response                  |
| <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
| <input type="checkbox"/> Consent Order             | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation               |
| <input type="checkbox"/> Discovery                 | <input type="checkbox"/> Prefiled Testimony                | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other:                    |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |  |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |  |
| <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |  |

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**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL  
ELIZABETH ZECK\*  
BENJAMIN P. MUSTIAN  
MICHAEL R. BURCHSTEAD

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

TRACEY C. GREEN  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

August 29, 2008

VIA HAND DELIVERY

Honorable Charles L.A. Terreni

Chief Clerk / Administrator

**Public Service Commission of South Carolina**

101 Executive Center Drive, Suite 100

Columbia, SC 29210

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COMMISSION

RE: Certification of the Use of Universal Service Funds Pursuant  
to 47 CFR 54.313. and 54.314 and the Telecommunications Act of 1934

Dear Mr. Terreni:

This firm represents Hargray Wireless, LLC ("HW"), which has asked that we respond to the August 22, 2008, letter to you from Nanette S. Edwards, Esquire, on behalf of the Office of Regulatory Staff ("ORS"), regarding the above-referenced matter.

HW is unaware that the Commission has issued any order requiring that HW contribute to the South Carolina Universal Service Fund ("SC USF") as would be required by statute. In the Commission's original order dealing with the SC USF, Order No. 2001-419, the Commission acknowledged that a wireless provider of telecommunications service must be given notice and an opportunity to be heard before it may be found to compete with a local telecommunications service in South Carolina and therefore be required to contribute to the SC USF. In fact, Order No. 2001-419 quotes, with emphasis, the pertinent language from S.C. Code Ann. §58-9-280(E)(3)(Supp. 2007) in that regard.<sup>1</sup>

Furthermore, the portion of Order No. 2001-419 addressing contributions to the SC USF by a wireless eligible telecommunications carrier ("ETC") recited in Ms. Edwards' letter is stated in the future tense and must be read as meaning that a wireless ETC **may** be required to participate in the SC USF when its ETC designation is granted if the Commission so orders.<sup>2</sup> To

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<sup>1</sup>HW was not and is not a party of record in the docket pertaining to the SC USF, Docket No. 97-239-C.

<sup>2</sup>As you are aware, Order No. 2007-804 (granting HW its ETC designation) is silent on

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read this portion of Order No. 2001-419 otherwise would require the Commission to require §58-9-280(E)(3), which HW respectfully submits the Commission may not do.

Also, subsequent to the issuance of Order No. 2001-419, the Commission issued its Order No. 2001-996, which approved the guidelines for the SC USF. In paragraph 5 of these guidelines, it states that telecommunications services subject to the SC USF include “wireless services where they compete with a local telecommunications service provided in this State.” Under §58-8-280(E)(3), notice and an opportunity to be heard must be afforded to a wireless provider before it may be determined to be competing with a local telecommunications service provided in this State and, thus, be required to contribute to the SC USF.<sup>3</sup> The absence of any reference to a wireless ETC in these guidelines also leads HW to conclude that Order No. 2001-419 does not impose a contribution requirement on HW simply by virtue of its designation as an ETC.

Additionally, under paragraphs 2 and 6 of the guidelines approved in Order No. 2001-996, a provider of wireless telecommunications service that is an ETC is not eligible to receive distributions from the SC USF. This limitation would appear to be inconsistent with the requirements of federal law that any ETC be eligible for universal service support. See 47 U.S.C. 214(e), 47 C.F.R. §54.807(a). Similarly, these guidelines limit the portability of universal service support to “carriers of last resort” which also appears to be inconsistent with federal law. See 47 CFR §54.807(d). Because the guidelines adopted in Order No. 2001-419 may not be inconsistent with federal law (see 47 U.S.C. §254(f)), HW believes that they cannot be interpreted as requiring a wireless provider, including one designated as an ETC, to contribute to the SC USF where that provider may not withdraw from the SC USF.<sup>4</sup>

this point. In addition, none of the parties in the docket resulting in that order – including ORS -- appear to have raised the issue of a requirement that HW contribute to the SC USF. No party in that case sought rehearing or reconsideration on this, or any other, issue. Thus, even though the Commission could have considered that issue in the proceeding addressing HW’s ETC application, it was not raised by any of the parties. Given that, HW would have a very real concern over potential claims by customers if it were to impose the retail surcharge contemplated by the SC USF guidelines.

<sup>3</sup>Moreover, HW believes that it would be incumbent upon a provider of a local telecommunications service to demonstrate the fact of such competition under S.C. Code Ann. §58-9-280(G)(1) (Supp. 2007) and make the showing required therein.

<sup>4</sup>I would note that in the portion of Order No. 2001-419 recited in Ms. Edwards’ letter, the Commission contemplated that a wireless carrier could apply for designation as a carrier of last resort (“COLR”). The fact that Order No. 2001-996 adopts guidelines precluding a wireless carrier from attaining COLR status is another indication that Order No. 2001-419 is not self-executing in regard to a requirement of wireless provider contribution to the SC USF as Ms. Edwards’ letter may be read to suggest.

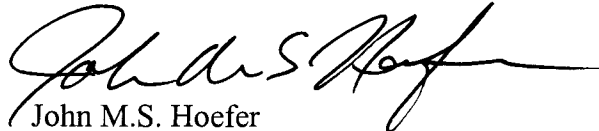
Finally, even assuming that HW was required to contribute to the SC USF simply by virtue of its initial certification as an ETC (which is disputed), any contribution requirement cannot apply to revenues earned before HW has received federal high cost support from the Universal Service Administrative Company inasmuch as no competitive services will have been provided using support dollars. As noted in Ms. Edwards' letter, the first installment of this support was not received by HW until June 30, 2008.

In conclusion, please be advised that HW is more than willing to contribute to the SC USF in a manner consistent with the requirements of federal and South Carolina law. However, HW cannot agree to contribute to the fund where it has had no notice or opportunity to be heard on the matter and, thus, no ability to collect a surcharge from customers as contemplated by the guidelines adopted by the Commission. Accordingly, HW will not be submitting a contribution worksheet to ORS.

If you have any questions, or need additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



John M.S. Hoefer

JMSH/cf  
Enclosures

cc: Nanette S. Edwards, Esquire